



## BT's response to Ofcom's consultation document

### *Helping consumers get better deals*

#### *Consultation on end-of-contract and annual best tariff notifications*

1 February 2019

**Non-confidential version**

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# 1 Executive Summary

## 1.1 Overview

1. BT is very supportive of initiatives which encourage engagement and enable consumers to make fully-informed decisions about their best option, in what is a fiercely competitive market for communications services. We are keen to ensure that consumers can access and choose the best deals available to them, so that existing customers remain satisfied and new customers are attracted.
2. Generally in the communications market there are very few barriers to consumers exercising choice. Ofcom should think broadly but intervene narrowly and only if there is demonstrable harm that competition can't address. We are pleased that Ofcom has looked for information remedies to encourage engagement; we believe more interventionist proposals would at this stage be disproportionate to the level of consumer harm, as the market is generally working well. We believe Ofcom should wait to see whether these information remedies are effective before proposing any further interventions.
3. We already take active steps to encourage our customers to engage with us, and we broadly agree with Ofcom's proposals to introduce a requirement for end-of-contract notifications to consumers and for annual "best tariff advice" to those who are outside the minimum term of their contract.
4. However there are certain specific aspects of the proposals which we think are unnecessary and likely to be confusing for customers, which could lead to unintended consequences, including a *reduction* in engagement levels – the opposite of what Ofcom is aiming to achieve. We also have significant concerns in relation to the requirements for business customers.

## 1.2 Unintended consequences of "best tariff advice"

5. Ofcom needs to consider the market broadly and take into account the risk of unintended consequences over time. It is likely to be too simplistic always to equate "best" tariff with "cheapest". It will always be in providers' best commercial interests to present strong and relevant offers to customers, in order to compete with other providers' acquisition offers, particularly as it will also be made clear to customers in their notifications that they can switch without charge. Therefore Ofcom should not be prescriptive about having to offer customers the *cheapest* deal, which might not reflect customers' current best interests and which could risk consumer detriment from less-than-optimum choices being made.
6. Consumers really benefit from today's highly differentiated and innovative communications market, in which competition is not just about price; and the unintended consequence of a focus solely on cheapest tariffs would be a reduction in the incentive for providers to invest in differentiation and innovation.
7. The proposed requirement to state the cheapest tariff available not just to the customer being addressed, but to *any* customer (even if not available to the customer in question), is likely to drive dissatisfaction and potentially poor decisions in the short term, and in the longer term is likely to lead to providers being forced to make discounted acquisition prices available more widely. This in turn could drive a levelling out of prices, and potentially an increase overall, through providers increasing the price of introductory offers to be closer to prices for re-contracting.
8. We appreciate that as a matter of policy some may consider it desirable for there not only to be equal opportunity for consumers to engage but also equal outcomes for all consumers. But price differentiation is an outcome of competitive markets. There must be benefits for consumers who do engage with the market and who choose to shop around. Without incentives to engage with the market, competition and consumer engagement will inevitably weaken. All consumers

(including both engaged and unengaged) benefit from competition – which drives efficiency and innovation – but marginal customers (i.e. those who engage most) do naturally benefit most. If acquisition offers become relatively less attractive, this is likely to *dampen* competition for new customers and reduce the incentive to switch. Therefore consumers will only continue to reap the rewards of competition, and Ofcom will only achieve its aim of encouraging consumer engagement, if it allows providers the freedom to compete on the basis of promoting attractive offers that are relevant to the individual consumer and transparently explained, rather than forcing them to offer the cheapest prices to all.

9. There are further complexities around the definition of “cheapest” tariff, in what is a dynamic, fast-changing and innovative competitive market. We propose that if Ofcom adheres to its proposed requirement to notify the “cheapest available” tariff for the same or nearest package, this should be defined as the cheapest price promoted on the provider’s website at the time the notification is sent, as this is likely to be the only feasible way to implement the requirement.
10. Whilst we acknowledge that it is appropriate to consider a customer’s usage when recommending best tariffs, including potential upgrade tariffs, these recommendations should be able to take account of likely future usage as well as historic usage. Most consumers’ mobile data usage, for example, is not static but increases over time as new apps, services and proposition developments become available.
11. The incentive to invest in new technologies, such as 5G and FTTP, as well as in innovative new propositions, depends crucially on providers’ ability to upsell to customers at a (reasonable) premium. Whilst of course it is very important that customers are well informed about the choice they are making, so that they do not buy a package they don’t really want, we believe many customers would value the ability to upgrade their service. If providers marketing to customers at the point they reach the end of their minimum commitment period, or when sending annual “best tariff” advice, are constrained in having to offer only the cheapest possible price for their current package, or the cheapest possible upgrade price, this will not support investment in new technologies and it will prevent consumers from enjoying new benefits.

### 1.3 Other problematic aspects

12. Ofcom needs to be mindful of information overload – it is proposed that a lot of information is provided to customers, not all of which is necessary for them to make an informed decision, especially the requirement for all ancillary services to be listed. Listing the core products that the customer’s contract relates to – landline, mobile, broadband and/or TV services – should be sufficient to encourage the customer to consider their options, as long as it is also made clear that other ancillary services can be seen on their bill or online account if required. Including all of these in the notification could make it much lengthier and more confusing for consumers; and information overload is very likely to cause consumers to disengage and switch off – again producing the opposite outcome from the one Ofcom intends.
13. The lack of flexibility resulting from the narrow 30 day window during which end-of-contract notifications are required to be sent could also lead to information overload if the end-of-contract notification clashes with a price change notification, for example, or any other communication which is time-bounded. Whilst we agree that the period between 10 and 40 days prior to the end of the minimum commitment period should be the target, we would prefer more flexibility to be made explicit in Ofcom’s guidance, so as to be able to address this issue if and when it arises, and reduce the risk of customers disregarding what they might see as “yet another email/letter” from their communications provider.
14. Clarity and certainty on record-keeping and reporting requirements are needed so that providers can build these requirements into systems from the start.

## 1.4 Business customers

15. Ofcom proposes a “lighter touch” in relation to business customers; however we believe Ofcom’s approach here is still much too prescriptive and that the requirements proposed are unjustified and disproportionate in relation to any business customers other than micro-businesses of less than ten employees. Ofcom has gone well beyond the requirements of the European Electronic Communications Code (EECC) in the detailed and prescriptive obligations it has proposed to impose in relation to all business customers.
16. There needs to be much more consideration given to how best to meet the widely-varying needs of micro-businesses, SMEs and large corporate businesses, rather than treating them all in the same way. In particular, in relation to notifications to account-managed customers and those with non-standard and bespoke contracts, we believe it would still be possible for Ofcom to adhere to the spirit of the EECC by taking a principles-based approach, rather than prescribing any specific rules. For a number of reasons explored in section 2 below, it would be unnecessary and disproportionate to apply prescriptive rules here, and providers should be given flexibility to take account of the nature of the commercial relationship. We would like to work with Ofcom to discuss flexible and proportionate ways in which the right outcome can be delivered for each type of business customer, with no unintended consequences.
17. In view of the complexity arising from differing business customer requirements and options, and the need to address this complexity when finding appropriate solutions, we strongly believe that a longer timescale for discussion with industry, agreement and implementation should be allowed with respect to business customer notifications, with completion to align with the deadline of December 2020 for EECC implementation.

## 1.5 Conclusion

18. Provided these concerns are properly addressed, BT would be supportive of Ofcom’s proposals and believes they should go a long way towards ensuring that all customers are on the most appropriate package for them, that they are paying a fair price, and that they are fully able to engage with, and take advantage of, the highly competitive communications market.

## **2 Scope of end-of-contract and annual best tariff notifications**

### **2.1 Relevant services**

19. As discussed in our previous consultation response, we are supportive of Ofcom’s proposal to apply the new requirements to providers of all public electronic communications services (PECS). We agree with Ofcom’s legal analysis that pay TV services can be regulated as PECS to the extent that they include the conveyance of signals on an electronic communications network, even if the same provider also provides broadcast content (which is separately regulated under the Audio-visual Media Services Directive).
20. We therefore agree that end-of-contract notifications and annual best tariff advice should be sent to all residential consumers subscribing to landline, broadband, mobile and/or pay TV services.

### **2.2 End users – extension to all business customers**

21. We welcome Ofcom’s proposal to take a differentiated approach between residential consumers and businesses, on the basis that businesses are likely to be better equipped to manage their communications contracts, that awareness of key terms and conditions is higher, and in recognition of the diversity among businesses. For these reasons, Ofcom proposes a “lighter touch” in relation to business customers; however we believe Ofcom’s approach here is still much too prescriptive and that the requirements proposed are unjustified and disproportionate in relation to any business customers other than micro-businesses of less than ten employees.
22. The European Electronic Communications Code (EECC), which must be transposed into national law by 31 December 2020 and which is a full harmonisation Directive, includes a requirement in Article 105 (3) to send end-of-contract notifications and best tariff information to all end users.
23. Ofcom’s proposal is that it will apply this requirement to “subscribers” rather than “end users” so that the notice is sent to the authorised party rather than every end user who may not actually be a party to the contract. Whilst we agree with this distinction, this still means that the requirement will be extended to all business customers, and not just those with ten employees or less, as proposed in Ofcom’s previous consultation.
24. We recognise that, now the EECC has been formally approved and published, Member States may not diverge from its provisions, i.e. NRAs cannot require provisions which are either more or less stringent, which would provide a different level of protection for end-users. However the requirements should be implemented in a way that meets the Code’s objectives in the most effective and appropriate way, which is likely to vary according to the type and nature of the customers concerned.
25. Article 105(3) of the EECC includes the requirements that end-of-contract notifications and annual best tariff advice relating to their services must be sent to customers in a prominent and timely manner and on a durable medium, before the end of a minimum commitment period, and must explain the means by which customers can terminate their contract.
26. However Ofcom has gone well beyond these requirements in the detailed and prescriptive obligations it has proposed to impose on all business customers. In addition to the obligations in the EECC, Ofcom has proposed that in their end-of-contract notifications to all business customers, providers must include:
  - A message explaining there may be multiple services provided under the contract
  - Any applicable notice period (or, for mobile, that a notice period may apply)

- A statement that ETCs will not apply after the end of the minimum commitment period
  - Details of other contracts provided to the same business, with a message explaining that if the customer terminates the contract, those other contracts might be affected
  - The current monthly subscription price for the contract and any change to the price at the end of contract
  - A message that the services under the contract may change (if applicable)
  - Information about the options available at the end of the minimum commitment period
27. And in annual best tariff notifications to all business customers, over and above the obligations in the EECC, Ofcom has proposed that providers must include:
- The fact that the customer is not within a fixed commitment period for the relevant contract
  - A message explaining there may be multiple services provided under the contract
  - Any applicable notice period (or for mobile, that a notice period may apply)
  - Details of other contracts provided to the same business, with a message explaining that if the customer terminates the contract, those other contracts might be affected
  - Current monthly subscription price
  - Information about the options available to the customer
28. We do not feel that obliging providers to include all these additional requirements can be described as “light touch”. Whilst we accept that there may be some justification for Ofcom applying these in relation to small business customers (i.e. micro-businesses of less than ten employees), as set out in its first consultation<sup>1</sup>, it has not made the case for these prescriptive rules to be applied in relation to notifications to larger business customers. No evidence has been provided of any lack of engagement from such customers, that might support the need for prescriptive rules, and extending the requirements of the EECC in this way is unnecessary and disproportionate.
29. Ofcom should not require that the *same* type of notification must be sent to all types of business customer, regardless of size. There needs to be much more consideration given to how best to meet the widely-varying needs of micro-businesses, SMEs and large corporate businesses, rather than treating them all in the same way. We would welcome a further discussion between Ofcom and industry on this.
30. In particular, in relation to notifications to account-managed customers and those with non-standard and bespoke contracts, we believe it would be possible for Ofcom to adhere to the spirit of the EECC by taking a principles-based approach, rather than prescribing any specific rules on the form and content of notifications, and providers should be given the flexibility to take account of the nature of the commercial relationship.

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<sup>1</sup> Helping consumers to engage in communications markets: Consultation on end-of-contract and out-of-contract notifications – Ofcom, 31 July 2018

31. For account-managed customers and those with bespoke contracts, for example, it is clear that the proposed prescriptive regulations are disproportionate, for the following reasons:
- Account-managed customers are already provided with all the information they need when they are approaching the end of their fixed commitment period. Account managers continuously engage with their customers throughout the contract in any event.
  - As Ofcom has noted, larger business customers generally have bespoke contracts. These contracts are negotiated individually and contain bespoke terms and prices applicable to that customer and based on that customer's choices and needs at the time.
  - These customers are very engaged, have buyer power (as demonstrated by their ability to negotiate on price) and have the expertise to navigate the market. We note and agree with Ofcom's comments at paragraphs 4.23 – 4.25 of the consultation document that most large customers have their own dedicated resources to deal with contract management, negotiation and re-signs. These discussions start at an appropriate stage with appropriately qualified staff who can conduct negotiations with their provider on equal terms. BT has extensive contract re-sign processes to assist these customers in getting the right deal for them, starting with conversations at a timely stage between the customer's representative and their account manager.
  - Unintended consequences are likely to result in terms of a poor customer experience, if they receive a confusing notification. This could arise where, for example, they have a complex portfolio of products on different contracts with different minimum terms and different minimum revenue commitments.
  - The systems developments needed to provide automated notifications containing prescribed content would be extremely complex and costly, with increased costs ultimately being borne by customers.
32. Therefore the new requirements in the General Conditions and in Ofcom's guidance should go no further than the EECC requirements in relation to contracts with business customers *other than* micro-businesses with less than ten employees. For larger businesses, there should be further discussion between Ofcom and industry as to how the EECC requirements (for customers to be informed of the end dates of contractual commitments, of the means by which to terminate the contract, and of best tariff advice) should be interpreted, so that implementation can be proportionate and appropriate. Our comments in the remainder of this document are subject to these points.

### **3 End-of-contract notifications**

33. In general, we agree with Ofcom that end-of-contract notifications should be a further means of raising consumer awareness. Providing information about when a minimum contract period is coming to an end, and any significant implications of this, will help consumers to engage with the market and to understand their options.
34. Notifications should be in a form that is understandable for consumers and they should be timely so that when consumers receive the information they can act upon it appropriately. Notifications should also, as far as possible, mitigate any unintended consequences for both consumers and providers.

#### **3.1 Circumstances in which an end-of-contract notification is required**

35. We agree with the proposal to align with the EECC requirements, which means there can be no carve-out for contracts of less than six months or of more than twenty-four months.
36. We also agree that there is no need for customers on monthly rolling (30 day) contracts to receive a notification, and that these should fall outside the scope of the proposed General Condition.
37. Customers who have chosen to renew their contracts early (prior to the end of their previous minimum commitment period) can similarly be excluded from any notification requirements relating to their previous contract.

##### **3.1.1 Standalone fixed voice customers**

38. In BT's voluntary commitments on standalone fixed voice, which took effect from 1 April 2018, BT agreed to:
  - Send annual statements to split purchase customers (who buy their landline and broadband services separately), setting out how they could save money by combining their line and broadband services (we agreed to do this for 3 years, as per the rest of the voluntary agreement)
  - Undertake randomised controlled trials with truly standalone voice customers (who have no broadband service with any provider) and implement the communication method most successful at "engaging" these customers
39. Our view is that end-of-contract and annual best tariff notifications seek to achieve broadly the same outcomes as the behavioural commitments accepted by Ofcom, and therefore to send both would be disproportionate and potentially confusing for customers. For consistency, we propose that end of contract notifications and annual best tariff statements are sent instead of the communications agreed as part of BT's voluntary commitments.
40. Specifically the proposed standard end-of-contract and annual best tariff notifications are more appropriate for split purchase customers because:
  - The requirement will be lasting, rather than just for 3 years;
  - It brings consistency with other customers across the market;
  - It requires providers of other split purchase customers to contact their customers, rather than just BT;

- Customers are likely to receive two statements – one from their landline provider and one from their broadband provider - thus they will be reminded that they buy their services separately; and
  - It is highly likely that providers would wish to include bundle offers in the notifications, thus potential savings will be made available to these customers.
41. For truly standalone voice customers the proposed notifications seek the same effects as BT's voluntary commitments. So again, for consistency we recommend they supersede BT's behavioural commitments. As there are no defined timescales for the standalone voice customer letters, replacing these with the proposed standard notifications would add certainty over when the customer engagement would take place. We would, however, commit to using any insight delivered from the trials (and the subsequent survey we agreed) to best inform the end-of-contract notifications and annual best tariff advice to standalone voice customers in order to maximise engagement from this segment.

## 3.2 Content of the notification

42. We agree that Ofcom should not prescribe the actual words or language to be used in relation to the information to be provided in the end-of-contract notification. It should be left to providers to use their own judgement as to how to communicate using the tone and language that is most effective for their customers.
43. We agree that notifications should always include the date on which the customer's fixed commitment period ends.

### 3.2.1 Ancillary services

44. However we continue to have significant concerns about the proposed requirement for notifications to residential consumers to include a comprehensive list of all services provided under that contract, including all ancillary services, except for those "billed by third parties".
45. We have a substantial number of customers who pay, via their bill, for third party services (e.g. ringtones or games). The customer contracts with that third party for the service, and instead of paying via a card or app store, adds the cost to their BT/EE bill for ease. We do not anticipate that the end-of-contract notification should refer to such services: even though they appear on the bill from us, they are not 'billed' by us and they do not form part of our contract with the customer. Customers may add and remove these as they wish.
46. Nor do we agree that notifications should include "all services provided under that contract". As explained in our previous consultation response, we believe that in order to minimise the risk of consumers not engaging with notifications, Ofcom should require that consumers only receive the most relevant information to help them make an informed decision when they come to the end of their contract. The purpose should be to prompt the customer into action, not act as a complete reminder of all services received, which can be easily obtained from a customer's bill, their online account or by talking to an advisor. Cluttering up the notification with a potentially long list of ancillary services is likely to confuse customers and detract from the main message. Information overload is likely to cause customers to *disengage*, and therefore risks the notification being counter-productive.
47. We agree with Ofcom that providers cannot be certain which services any individual customer would consider to be valuable. However, to avoid information overload in the notification, we suggest it would be preferable to require providers just to include a reminder that customers can see any additional free or chargeable services on their latest bill or on the My BT/My EE app.
48. A BT customer with landline, broadband, TV and mobile could have a number of ancillary services, the following being a perfectly realistic example:

- Complete Wifi
- Parental control
- Virus Protect
- Double mobile data
- £5 off mobile
- Anytime Calls add-on
- Friends and Family International add-on
- Call Protect
- Caller Display
- BT Answer 1571
- Netflix add on
- Sky Cinema add-on
- HD Extra
- App extra
- Kids Extra bolt on
- BT TV music
- Extra Box bolt on
- USA mobile data roaming add on
- 1GB extra mobile data bolt on
- Free Amazon Prime membership

All of these services are either included as part of the customer's package, with no separate minimum commitment period and no separate price; or they are provided on a 30 day rolling basis and can therefore be ceased at any time, irrespective of the core contract.

49. We note that Ofcom's own example notifications on page 74 of the consultation do not include any ancillary services. To demonstrate how cluttered this information could make the notification look, we have created mock-up notifications based on Ofcom's example notifications, but with potential ancillary services added. These are shown at Annex A.
50. We also note that at paragraph 6.50 of the consultation, when discussing best tariffs, Ofcom states "we expect providers to focus on the main aspects of the services provided to the consumer under the relevant contract because these are likely to be essential to any comparison.....The provider may also include other services, like over-the-top content services for music and video streaming or cloud storage, but we would consider these subsidiary to the main services." This is inconsistent with Ofcom's insistence on inclusion of such subsidiary or ancillary services in the first part of the notification.

51. In addition to the risk of confusing customers, diluting the key message and putting them off from engaging, the requirement to list all ancillary services would also add complexity and cost to the systems development and implementation. Our marketing systems (from which end-of-contract notifications are, and will continue to be, sent) do not currently contain records of which specific ancillary services a customer has on their account (this information is held in customer account records and billing systems). This is because our marketing offers are driven by the core services that the customer has signed up to, and there is no need for the marketing system to hold information on ancillary services. We strongly believe that end-of-contract notifications should similarly be required to contain only those core services – fixed broadband and landline package, inclusive calling plan, mobile voice and data package, TV package – which the customer has expressly signed up to and which form the core part of their contract. Add-ons or other ancillary services that have 30 day rolling contracts or less, and which the customer can cease without affecting their core services or obligations, should be excluded. This would save the costs of the extra systems development work, which would be significant [§<]. Given that inclusion of ancillary services would be very likely to be counter-productive, requiring providers to incur such incremental costs would clearly be disproportionate.
52. Notwithstanding the points made in section 2.2 above, we are pleased Ofcom has recognised that for business customers, the list of services taken under a contract may be even longer, and therefore impractical to provide; so the requirement is just to include a message explaining that there may be multiple services provided under the contract, without having to list them all. We suggest that the requirement should be same for residential consumers, given the evidence of potential complexity provided above.

### **3.2.2 Means by which to terminate the contract**

53. We agree that in the end-of-contract notification residential consumers should be told of any applicable notice period or, in relation to mobile contracts that a notice period may apply in the event that they want to terminate their contract.
54. For business customers, however, notice periods are likely to be more complex and to vary between different services under the same overall contract (see section 2.2 above). Therefore we suggest that for business customers, the requirement (if any) should simply be to state that a notice period may apply.
55. We agree with Ofcom that it is important for customers to understand that, from the end of the fixed commitment period, they are able to terminate their contract without paying early termination charges. Therefore it is appropriate that this information should be required to be included in end-of-contract notifications for residential consumers, and expressed in clear and unambiguous terms.
56. When it comes to business customers who, as Ofcom points out, are likely to be better informed and, in some cases, to have dedicated resources for managing their communications contracts, it is highly unlikely that they would not be aware that early termination charges no longer apply once a fixed commitment period has ended. In our view it is therefore unnecessary and disproportionate to have to state this in end-of-contract notifications to business customers.
57. We agree that providers should inform customers how to go about terminating their contract, and that in complying with this requirement, providers should take into account Ofcom's existing guidance under General Condition C1.3 on conditions and procedures for contract termination.
58. In relation to including other contracts, Ofcom's revised proposal is more acceptable, i.e. that consumers only need to be informed of other contracts with the same provider where there is a financial link to the core contract that is the subject of the notification, and/or where there is an interdependency between the core contract and the other contract, such that the customer's decision on whether to move to a different contract with the same provider or to switch to another provider could be affected.

59. However, we still have concerns that this could make the notification overly complex and confusing for customers. For example, EE customers can have up to [X] mobile contracts on their mobile account and their home broadband contract on a separate account [X]. Subsequent subscriptions within a mobile account are eligible for a [X] multi-line discount. When the number of subscriptions reduces below [X]. Detailing these different contracts and the specific interplays between them would be extremely difficult to achieve within what needs to remain a simple message, and could again lead to customers disengaging, undermining the whole purpose of the communication.
60. We propose instead that customers could be told to call the provider to discuss any impact on other contracts they may have. This would achieve the same ends, without the risk of overloading customers with complicated information which could have the effect of disengaging them.
61. We note that Ofcom also expects the date on which the fixed commitment period ends for these other contracts to be included in the notification. Whilst we accept that this might be relevant if the consumer wishes to consider his or her options in relation to bundling of services, there is a risk that inclusion of these additional dates could just add to the confusion. Alternatively, as with the other contracts themselves, customers could be advised to call the provider for details of end dates for the fixed commitment period of other services for which they are contracting.
62. The requirement to include other contracts (and their end dates) in the notification would also add considerably to the complexity and cost of systems implementation. For example, [X]. [X]As there is an alternative, less burdensome way of achieving the same ends which would not require providers to incur the costs of complex systems development, it follows that it would be disproportionate to impose such a requirement.
63. Notwithstanding the points made in section 2.2, we are pleased Ofcom has recognised that for business customers, the list of other contracts may be too large and impractical to provide, and that therefore the requirement is only to include a message explaining that if the customer terminates the contract, other contracts may be affected.

### **3.3 How the end-of-contract notification should be sent**

#### **3.3.1 Timing of notice**

64. Ofcom has changed its proposals here, from requiring notifications to be sent between 40 and 70 days before the end of the fixed commitment period, to requiring them to be sent between 10 and 40 days before, in its draft guidance. This is to ensure that consumers have some time to consider their options and take action should they wish to do so, but also to ensure that consumers receive the notification at a time when they would be likely to act immediately, bearing in mind varying notice periods.
65. We note that Ofcom states this does not preclude providers from sending additional notifications if they so choose, either before or after this window.
66. We also note that Ofcom expects providers to send aggregated notifications covering more than one contract, and to meet the same timing requirement, where the end of the fixed commitment period dates are close together.
67. On this basis, we believe Ofcom should allow a longer window so as to give providers more flexibility to take account of potential clashes with other forms of notification, such as price change notifications, and thus avoid customer confusion or potential information overload. Whilst sending between 10 and 40 days prior to the contract end date should be the aim, we would like it to be made explicit in Ofcom's guidance that providers will be given some flexibility where such issues arise, so as to reduce the risk of customers disregarding what they might see as "yet another email/letter" from their communications provider in a short space of time.

68. We are pleased Ofcom has recognised that for business customers, particularly larger businesses, notice periods and processes for changes to services may be considerably more complicated than for residential consumers; the EECC requirement for “timely” notification will mean different time periods for different types of businesses, and therefore no precise period is to be specified in relation to business customers.

### **3.3.2 Form of notice**

69. We have no concerns about the requirement to send end-of-contract notifications by “durable medium”, as defined in the General Conditions.
70. Similarly we have no concerns about the requirement to send the notification as a standalone communication, separate from bills, general marketing information or other service messages, so as to ensure sufficient prominence.
71. We agree with the proposal that notifications for residential consumers should lead with the date the customer’s fixed commitment period ends; then the current price paid and the new price that will come into effect when the fixed commitment period ends (if there is a change in price); with the provider’s “best tariffs” coming at the end of the notification (or via a link to the provider’s website, in the case of SMS notifications).
72. We are pleased Ofcom has decided to give providers the flexibility to decide which channel or method of communication to use; and that the content of SMS notifications can be cut down, as long as the prescribed essential information is included.
73. We agree that providers should be required to send end-of-contract notifications in accessible formats, such as electronic, braille or large print, where customers have registered to receive their bills in an alternative format.

## **4 Best tariff advice and annual notifications**

### **4.1 Monthly subscription price and any changes**

74. We agree with Ofcom's proposal that best tariff advice should include the current monthly subscription price currently paid by the customer and how this will change (or not) at the end of the fixed commitment period. We are pleased Ofcom has recognised that the inclusion of historic discount information is unnecessary and could be confusing to customers.
75. We also agree with the requirement to list any changes to the services provided to residential consumers under the contract that will take effect at the end of the fixed commitment period; or, for business customers, to explain that the services under the contract may change (but see our comments in section 2.2 above).

### **4.2 Options available to the customer**

76. In both end-of-contract and annual best tariff notifications, Ofcom proposes to provide guidance on what messages should be included for residential consumers regarding their options, i.e. that they can:
- Stay on their existing contract (beyond the end of the fixed commitment period)
  - Switch to a new contract with the same provider
  - Switch to a new contract with a different provider; and
  - For mobile consumers on pay monthly contracts for handset and airtime only, switch to a SIM-only deal
  - The advice should also state that some providers may offer new customers better deals, and that they may get a better deal if they bundle the services they have (either with the current provider or a new one)
77. We have no concerns with these generic advisory statements. For business customers, we are pleased Ofcom has recognised that there is no need to specify any requirements, other than that a provider must give customers information about their options; but please see our comments in section 2.2 above.

### **4.3 The provider's best tariffs**

78. In principle we acknowledge that Ofcom must implement the requirements of the EECC to provide "best tariff advice", and that this should enable consumers to make informed choices, make them more willing to engage actively with the market, and allow them to take full advantage of competition.
79. However we have significant concerns that, if not considered very carefully, there could be unintended consequences arising from Ofcom's interpretation of these requirements which could be damaging to consumer welfare overall. "Best" does not necessarily mean "cheapest".

#### **4.3.1 Consumer's previous usage**

80. Ofcom states that where it is relevant (i.e. primarily in relation to mobile services), providers should use a consumer's previous usage of the main aspects of the consumer's services to inform their best tariffs for that consumer. We agree in principle that usage is an important consideration for many consumers, and that therefore informing consumers of their usage data as part of an end-of-contact or annual best tariff notification could help them make a more

informed choice about their communications services, resulting in a better outcome for consumers.

81. However we are pleased Ofcom acknowledges that there are circumstances where a consumer's prior consumption may not be a good indicator of their future needs. This could be because their usage is constrained by their current allowance and so does not reflect their true requirements; or because the consumer has deliberately chosen a package with a higher allowance than they typically use, because they value the certainty of knowing that they will not exceed their allowance and will have no extra charges for doing so. Customers' financial circumstances may well have changed over time.
82. Future data usage is, on average, highly likely to increase year-on-year for most customers in any case, as they become more reliant on online activities and transactions, as new services become available and as network speeds increase. Amongst EE customers, for example [§<].
83. If providers had to demonstrate that the best tariff they had recommended was always based on customers' prior usage, this would fail to take account of this likely data growth and would be very likely to result in the customer paying out-of-bundle charges unnecessarily or being prevented from easily accessing the full array of online services and content available to them. A similar point applies in relation to broadband speeds, where a customer's previous speed does not necessarily indicate the speed they would like or need in future.
84. Constraints on marketing upgrade tariffs based on future needs could also have a deterrent effect on investment in new technologies. Investment in the fixed network to allow faster broadband speeds, and in mobile 5G networks, is dependent on having sufficient volumes of customers paying for services that are faster or which supply more data than they might be likely to need in the first instance, so as to give headroom for growth. If Ofcom insisted that providers should always recommend packages based on historic usage levels, this could constrain technology development.
85. Similarly new propositions and add-ons are continuously being developed, in both fixed and mobile markets, which improve customers' experience and which are likely to lead to higher data usage as customers find new ways to enjoy their service.
86. Therefore providers must be able to offer consumers best tariffs – particularly upgrade tariffs – which take into account consumers' likely future needs as well as their historic usage, since this is more likely to be in their best interests. The most important factor is that the best tariff recommendation should be clear and transparent about the benefits and the costs of the tariff concerned, so that consumers are not misled into taking a package that is inappropriate for them.

#### **4.3.2 Similar packages**

87. We agree in principle that, where it is not appropriate or relevant to base a best tariff recommendation on usage, providers should list tariffs which most closely match the customer's existing package of services.
88. However it might not always be obvious which package is the best match. For example, for mobile handset customers wishing to re-contract, the range of handsets (with widely varying benefits) and combination of speeds and data in the packages available at the time are very unlikely to match what the customer chose two or more years ago. EE has typically revamped its tariff [§<], adding or removing services or extras. Any recommendation should aim to take account of which of these services a customer values most. If any services or extras (e.g. roaming destinations) have been removed from a package since the customer last signed up, they may incur additional charges if we just assumed they wanted the same services again. And providers won't know whether the customer wants to stay on 4G or take up 5G too once it is available.

89. Even on fixed broadband, where devices are not part of the decision, it may not always be apparent which packages that are available for new sale at the time of the notification are a match with the customer's original package. BT and EE regularly update their products and propositions available for sale to new or regrading customers in order to improve service and/or add benefits. For example, [3G] that might not have been available when a customer signed up for their previous contract. And of course if superfast or ultrafast broadband are now available when they were not previously, the customer should be made aware of any similarly-priced packages to their original package as well as any upgrade options.
90. "Best tariff" does not necessarily mean the cheapest monthly subscription or rental price. A number of other variables will influence the overall cost and value-for-money to the customer; for example, providers may offer a cheaper subscription price but with a higher up-front activation charge, or there may be other benefits such as inclusive calls or discounts on other products to factor in, or a longer minimum commitment period in exchange for a cheaper subscription price, which might be preferred by some customers.
91. Again, therefore, we believe providers should be given the flexibility to pick what they believe to be the closest package that would not result in a deterioration of service, i.e. the next *better* package, as long as they are clear with consumers about why the tariff promoted to the consumer is most likely to be suited to their needs.

#### 4.3.3 Up to three best tariffs

92. We agree that providers should give residential consumers at least one and up to three tariff options in their end-of-contract and annual best tariff notifications. This number strikes the right balance between giving consumers sufficient choice, and not confusing them with too much information so as to over-complicate their decision.
93. For business customers who, as Ofcom has noted, are more likely to be resourced to understand and weigh up their options in a professional way, no such limitations on the number of options should be included and providers should be left to decide on the appropriate number, based on the customer's size, capability and the sophistication of their needs.

#### 4.3.4 Cheapest tariff

94. Ofcom proposes to require providers to include in their end-of-contract and annual best tariff notifications the cheapest tariff which they are prepared to offer to the consumer, for the same or similar package, if they renewed their deal.
95. This is reasonable in principle, and is in line with the end-of-contract notifications we already send in some circumstances, in which we present offers to customers to encourage them to renew their contract. The market for communications services is highly competitive and dynamic, and therefore these offers may change on an almost daily basis as a reaction to competitors' offers, consumer demand or other market-driven factors. We assume Ofcom would not want to constrain the dynamic nature of this market by suggesting that the tariff offered to a particular customer for a particular package in their end-of-contract notification must be the lowest tariff offered to *any* customer in the same circumstances, and cannot be changed. Providers must be free to react to market dynamics over time, and consumers must be free to negotiate a better deal. It would be a perverse outcome if, having quoted a best tariff offer to a customer, providers could not then choose to go lower if the customer subsequently rang us to negotiate a couple of weeks later. On the flip side of the coin, providers should have the right to make a particular best tariff offer subject to uptake within a reasonable period (which the provider should specify in the notification).
96. We are more concerned, however, with the proposal that best tariffs should also include the cheapest tariff which the provider makes available to *any* consumer for the relevant service package, even if the specific consumer to whom the advice is sent is not eligible for it (for example because it is only available to new customers). This raises a number of concerns.

97. First, there is a question around the definition of “cheapest tariff made available”. As explained above, the dynamic and competitive nature of the market means that some consumers are offered deeper discounts which are not available to others, and such offers may be available only in certain geographic areas, or to certain customer types, or only for very short periods of time. In the mobile market, package prices change frequently to reflect changes to handset costs, which are affected by, for example, manufacturers’ short-term discounts and currency fluctuations. A healthy, competitive market thrives on providers being able to make quick pricing decisions to respond to competition – best tariff advice could be restrictive here if offers sent in these communications have to match the cheapest available. It would be almost impossible to ensure that the tariff included in a notification as the “cheapest available to any consumer” could actually be verified as being the cheapest at that point in time, and it would not be in consumers’ interests if cheaper short-term offers could not be made for fear of creating a mis-match with “cheapest tariffs” included in recent notifications.
98. To deal with this concern, we propose that, if Ofcom continues with its proposal, “cheapest tariff made available” should be interpreted to mean “cheapest tariff published on the provider’s website at the time of the notification” (notwithstanding the variable factors described in paragraph 90 above which could affect the assessment of what is “cheapest”). This would be verifiable by consumers, and would prevent the unintended consequence of providers removing the discretion currently given to advisers to offer cheaper deals selectively and where appropriate; deals which reward customers who actively engage with the market.
99. Second, the inclusion of “cheapest tariff made available to any consumer”, when the tariff is not available to the consumer in question, would be likely to drive significant dissatisfaction, which could lead to customers switching to another provider simply out of annoyance, when this is not necessarily in their best interests. Alternatively it could lead to frustration and complete disengagement.
100. Third, the inclusion of a tariff not available to the consumer “uses up” one of the three tariffs that providers are allowed to include, wasting the opportunity to give them three options that are open to them. For mobile customers who also require a SIM-only option and an option based on their current package, this could mean they cannot be given an upgrade option, which would deny them an offer that might well be the most attractive to them.
101. Fourth, the requirement to notify the “cheapest tariff available to any consumer” may have the unintended consequence of causing a levelling out of tariffs between new and existing customers, through an increase in acquisition prices. This is because if these acquisition prices have to be published to all customers, CPs will end up having to offer them more widely and will therefore have to make them less generous, leading to a smaller gap (or potentially even *no* gap) between the prices paid by new and existing customers.
102. We appreciate that as a matter of policy some may consider it desirable for there not only to be equal opportunity for consumers to engage but also equal outcomes for all consumers. But price differentiation is an outcome of competitive markets. There must be benefits for consumers who do engage with the market and shop around. Without incentives to engage with the market, competition and consumer engagement will inevitably weaken. All consumers (including both engaged and unengaged) benefit from competition – which drives efficiency and innovation – but marginal customers (i.e. those who engage most) do naturally benefit most. If acquisition offers become relatively less attractive, this is likely to dampen competition for new customers and reduce the incentive to switch. Therefore consumers will only continue to reap the rewards of competition, and Ofcom will only achieve its aim of encouraging consumer engagement, if it allows providers the freedom to compete on the basis of promoting attractive offers that are relevant to the individual consumer in question and transparently explained, rather than forcing them to offer the cheapest prices to all.
103. Similarly, the requirement could stifle innovative pricing plans, for example those aimed at rewarding loyal customers. If providers had to notify the lowest price available to any consumer, this would be likely to mean any loyalty discounts that might be offered selectively to consumers

who had been a customer for more than a certain length of time would be withdrawn, rather than having to make such discounts available more widely to newer customers receiving end-of-contract or annual best tariff notifications. Similarly pricing plans which offer discounts to customers who take multiple products would be problematic, and may have to be withdrawn if the same discount had to be offered to all customers taking the same products separately.

104. The requirement to notify customers of the “cheapest tariff available to any consumer” may also encourage providers to engage in “gaming” and avoid the notification of their best acquisition deals by increasing the subscription price whilst giving away non-price benefits such as vouchers or cash rewards.
105. It is not clear whether the “cheapest tariff available to any consumer” would include the prices we offer through affiliates/price comparison websites. If it did, this would seriously jeopardise competition on those platforms as providers would consider withdrawing these offers to prevent having to offer such tariffs more widely. Around [X] of BT’s new acquisitions are currently made through affiliates. EE Mobile sells around [X] of upgrades and around [X] acquisitions through intermediary channels.
106. For all these reasons, we would propose instead that, along with the best tariffs *available* to the customer, CPs should just have to include a statement to the effect that customers might get a better deal if they switch to another CP as a new customer, which would meet Ofcom’s objective of ensuring customers understand this point, without driving unintended consequences to pricing that could harm consumer welfare. It would still be in providers’ interests to make attractive re-contracting offers to consumers, to try to retain their business, particularly when positioned alongside the option of switching to another provider.

#### 4.3.5 Upgrade tariffs

107. In Ofcom’s explanatory text, it says the upgrade tariff must not be one which is unsuitable for the customer, and it should be a tariff “which the average consumer would agree is amongst the provider’s best tariff options for them”. This implies some flexibility, particularly as elsewhere Ofcom acknowledges that usage can be likely to increase over time (see para 82 above). However the draft Guidance itself says “a provider may include the cheapest upgrade tariff” if there is reasonable objective justification. It is not clear what “cheapest” means in this context – cheapest compared to what?
108. If this means it has to be the cheapest tariff at which that upgraded package is sold, then again it would have a “levelling out” effect on all tariffs, and would suppress the dynamic nature of the competitive market in which special offers can be made for short periods, in limited circumstances, and at the discretion of advisers.
109. If this means it has to be the “next cheapest” tariff to the one the customer is currently on, this would fail to take account of the fact that customers’ needs generally change over time, as explained in section 4.3.1 above, and they may well be interested in a package that is significantly faster, or with more data, for example, than the one they chose two or more years ago.
110. In the mobile market, the majority of customers will want to upgrade their handset when they reach the end of their contract. If providers are only able to offer the lowest tariff for a similar handset and airtime package, customers will end up with a like-for-like replacement which is unlikely to meet their needs or expectations and therefore unlikely to represent the “best” tariff for them. Vulnerable customers who are less able to work out for themselves what is best are more likely to be caught by this.
111. Constraining the ability for providers to market significant upgrades at the point where customers are most likely to consider them could also destroy incentives to invest in new propositions and technologies. As explained in paragraph 89 above, BT and EE continually invest in our products, services and propositions with the aim of improving customers’ experience in all respects – for

example the rollout of ultrafast broadband and 5G mobile services, as well as mobile propositions such as [§<]. We think it is important to give customers the opportunity to consider taking up such new benefits.

112. The investment case for fibre to the premises (FTTP), for example, depends crucially on providers' ability to upsell fibre to customers at a (reasonable) premium. Whilst of course it is very important that customers are well informed about the choice they are making, so that they do not buy a package that they don't really want, we believe many customers would value the ability to switch to a FTTP deal. If providers marketing to customers at the point they reach the end of their minimum commitment period, or when sending annual "best tariff" advice, are constrained in having to offer only the cheapest possible price for their current package, or their cheapest possible upgrade price, this will not support investment by Openreach or alternative network providers in the rollout of FTTP.
113. Our proposal is that when it comes to upgrade tariffs, CPs should be given flexibility to offer the customer whichever package they can demonstrate to be appropriate to that customer, at whichever tariff the provider wants to offer, rather than having to equate "best" with the "next cheapest" package. Customers can then weigh up this upgrade option against the cheapest price available to them for renewing their contract for their existing package (or nearest equivalent).
114. Providers will be incentivised to offer realistic and attractive upgrade offers, given that they will be competing with other providers' acquisition offers and will also be pointing out to customers that they can switch without paying early termination charges.

#### **4.3.6 SIM-only tariff**

115. Whilst we agree in principle that customers should be told about the nearest equivalent SIM-only deal and the savings that a SIM-only tariff would bring, providers would also need to make it clear to customers that significant additional benefits that come with having a handset deal would be lost. Otherwise a consumer could be misled. Such benefits, which we believe are highly valued by customers, include [§<].

#### **4.3.7 Bundled services**

116. We agree that it would be appropriate for providers to tell consumers about the best tariff for a bundle of services where the consumer has other services with the same provider and could make material savings by buying the services together in a bundle.

### **4.4 Business customers and "best tariff"**

117. BT appreciates Ofcom's acceptance that business contracts are different to those for consumers and that it hasn't set detailed guidelines to follow for implementation, leaving providers with flexibility to assess and comply with the regulation.
118. The concept of best tariff is very difficult to achieve in an automated and consistent way for business customers. Best tariff is very subjective: what is the best for one customer is unlikely to be the best for another. As with residential customers, the best tariff may very well not be the cheapest for business customers. For instance in relation to broadband, the best may be based on the best speed, or the best technology available in that area, depending on the customer's priorities. The best may relate to new technology, such as a move from PSTN to All IP.
119. Customers' needs and priorities change rapidly. Business customers will very often be focussed not on price, but on additional services, extra security or personalised managed solutions. The price depends on many variables which are usually discussed with the customer, such as minimum revenue commitments, any upgrade or downgrade required, or new technology solutions (e.g. 5G). The difference between consumer and business priorities was highlighted in Ofcom's consultation on the Strategic Review of Digital Communications (October 2015). This

showed that consumers ranked price as the number one factor whereas business customers put this in the mid-range, putting quality of service, speed and customer service above price.

120. As discussed in section 2.2 above, corporate contracts are configured by an account manager through an internal governance process, in a commercial model individual to that customer. The price achieved would be subject to a number of variables, including other products taken, historic/anticipated usage, cost of services, contract clauses, rebate credits etc. When a customer re-signs a contract, the same terms and prices they agreed to previously may not be available at that time, and therefore it is more appropriate for BT to have a discussion with the customer about their current needs and what is available.
121. The permutations of types of contracts and offers are extensive. There are many variables that can be negotiated in some propositions, from pence-per-minute rates for specific call types (which can be numerous) to the technology fund that customers may require for their device needs. When discussing contracts with customers and to get the best deal for them, we may use: [X].
122. To include all such considerations in end-of-contract notifications and annual best tariff notifications without discussion would be extremely difficult and potentially unhelpful for a customer. In particular, notifying annual “best tariffs” to large business customers, who expect to negotiate their deal, would undermine the negotiation process and potentially mislead customers.
123. To provide best tariff information on an automated basis would require extensive and complex systems development. The output would be dependent on a number of variables and would be very unlikely to meet the customer’s current needs. The better way is for the parties to have discussions as to their needs and for the “best tariff information” to be tailored accordingly.
124. The above applies especially to the annual best tariff notice where customers have not re-signed recently. Their needs may have changed significantly and it would be extremely difficult to provide a “best tariff” based on their current products.
125. As proposed above, we believe further discussion is needed between Ofcom and industry to arrive at a principles-based approach which takes into account the varying needs of different types/sizes of business and enables the objectives of the EEC requirements to be achieved without unnecessarily constraining normal business practices or causing unintended and unfavourable consequences.

#### **4.5 Other information to be provided in annual best tariff notifications**

126. We have no concerns about the requirement to inform customers that they are beyond their fixed commitment period and can terminate their contract and sign up to a new deal.
127. For the same reasons explained in section 3.2.1 above in relation to end-of-contract notifications, we do not agree that providers should have to give residential consumers a comprehensive list of all services which form part of the contract, including all ancillary services, in their annual best tariff notification. This would make the notification unnecessarily complex and potentially confusing, and would add disproportionately to the implementation costs and timescales for providers.
128. We agree it is reasonable to include in residential consumers’ notifications a statement of the applicable notice period or, in relation to mobile services, a message that a notice period may apply.
129. As for end-of-contract notifications, we believe the requirement to include details of other contracts taken with the same provider in annual best tariff notifications for residential consumers

is likely to result in information overload and therefore will have the unintended consequence of causing the customer to disengage. Please see paragraphs 59 to 63 above.

130. We agree this requirement is unnecessary for business customers, who need only a statement that other contracts may be affected. However please see section 2.2 above.

## **4.6 How the annual best tariff notification should be sent**

### **4.6.1 Timing of notice**

131. We agree that Ofcom should require providers to send best tariff information at least annually, or within 12 months of receiving an end-of-contract notification, in line with the requirements of the EECC.

132. However we have concerns with the proposed implementation period proposed by Ofcom, particularly in relation to business customers. Please see sections 5.1 and 5.2 below.

### **4.6.2 Form of notice**

133. As with the form of end-of-contract notifications, we have no concerns with Ofcom's proposals here. Please see para 3.3.2 above.

## **5 Implementation period and monitoring**

### **5.1 Implementation period for residential consumers**

134. Ofcom proposes that they will adhere to their original requirement for end-of-contract notifications to be implemented by six months from the date of their final statement, which will be the date the revised General Conditions come into effect. And providers will be required to have sent annual best tariff notifications to all out-of-contract customers within twelve months from the date the GCs come into effect.

135. These timescales will be extremely challenging given the additional complexity of the “best tariff” requirements that have now been added, and this is particularly so if the requirement to list all ancillary services in notifications is retained. We are concerned that a six month implementation period leaves little or no time for adequate testing of the systems changes prior to launch, and hence there would be a significant risk of error, particularly given that we have to work within the constraints of our quarterly systems release schedules. A nine month implementation would be more realistic and achievable, with a further three months needed if the requirement to list all ancillary services is retained.

### **5.2 Implementation period for business customers**

136. In relation to business customers, a six month implementation period is not feasible or justified, and in BT’s view this should be extended to December 2020, in line with the deadline for implementation of the EECC.

137. The inclusion of best tariff advice and the extension to all business customers are unexpected new requirements. Notwithstanding our comments in section 2.2 above on a principles-based approach for large businesses, it will be particularly complex to come up with a model for ‘best tariff’ for business customers; so time needs to be given for these issues to be properly considered to ensure a smooth customer experience, without any unintended consequences.

138. The proposals require major changes to our systems and Ofcom has not made clear that it has taken account of these considerations in setting its proposed implementation period, nor justified why, for business customers, the implementation period needs to be shorter than that required by the EECC.

### **5.3 Monitoring requirements**

139. Ofcom proposes to monitor the implementation of end-of-contract and annual best tariff notifications, through requiring providers to keep a record of each notification for a period of at least twelve months, and to request additional data from providers.

140. Further clarity is required on what specific information providers should hold. We propose that it should be sufficient to retain the date on which a customer’s last notification was sent, and the offers made within that notification.

141. It would be helpful for Ofcom to specify the required format and timing of any data requests they propose to make, so that MIS requirements can be built into systems at the same time as the requirements for the content and delivery of the notifications themselves.

## 6 Answers to Ofcom's questions

This section provides BT's responses to the questions raised in the Ofcom consultation.

**Question 1:** Do you agree with the way we propose to implement the requirement to provide end-of-contract notifications in terms of the services they should cover?

Yes, we agree that the proposals should apply to all providers of Public Electronic Communications Services (PECS). We agree with Ofcom's view that pay TV services can be regulated as PECS to the extent that they include the conveyance of signals on an electronic communications network, even if the same provider also provides broadcast content. Please see section 2.1.

**Question 2:** Do you agree with the way we plan to implement the requirement to send end-of-contract notifications and annual best tariff notifications to residential consumers and businesses? Please provide evidence to support your views.

We agree that it is appropriate to treat business and residential customers differently and to provide providers with more flexibility to deal with its business customers. However, we believe Ofcom has nevertheless been too prescriptive in relation to business customers and that more consideration needs to be given to how best to meet the widely-varying needs of micro-businesses, SMEs and large corporate businesses, rather than treating them all in the same way. We welcome a further discussion with Ofcom and industry on this. See section 2.2.

**Question 3:** Do you agree that end-of-contract notifications should be sent to end-users before the expiry of a fixed commitment period, if the contract will be automatically prolonged after that point?

Yes, we agree.

**Question 4:** Do you agree with our proposal not to specify in a prescriptive way the words and language used in end-of-contract notifications?

Yes, we agree. Providers should be allowed the flexibility to communicate to their customers in their own style and tone.

**Question 5:** Do you agree with our implementation proposal for the end-of-contract notification to include the date on which the fixed commitment period will end?

Yes, we agree.

**Question 6:** Do you agree with our implementation proposal for the end-of-contract notification to include details of the services which the provider currently provides to the end-user under the relevant contract?

We consider that only core services that the customer's contract relates to should be included in the notifications, with a reminder that other ancillary services can be seen on their latest bill, online account or My BT/My EE app, if required. The requirement for all ancillary services to be listed may lead to information overload, and distract customers from the main message, causing them to disengage and rendering the notification ineffective. Please see section 3.2.1 and Annex A.

Subject to our comments in section 2.2, we agree that for business customers, providers should have flexibility to simply include a message explaining that there may be multiple services as part of the contract.

**Question 7:** Do you agree with our implementation proposal that the end-of-contract notification must include information regarding notice periods?

Yes, we agree that in the end-of-contract notification residential consumers should be told of any applicable notice period or, in relation to mobile contracts that a notice period may apply in the event that they want to terminate their contract. For business customers, subject to our points in section 2.2, we think the requirement should simply state that a notice period may apply.

**Question 8:** Do you agree with our implementation proposal that the end-of-contract notification must include information regarding early termination charges?

Yes, we agree that it is important for residential consumers to understand that, from the end of the fixed commitment period, they are able to terminate their contract without paying early termination fees.

**Question 9:** Do you agree with our implementation proposal that the end-of-contract notification must include information regarding other contracts which the provider currently provides to the end-user?

We believe it would be preferable for customers just to be told to call their provider to discuss any impact on other contracts they may have. This would avoid information overload, particularly as some customers may have multiple contracts. See section 3.2.2, paragraphs 58 to 63.

Subject to our comments in section 2.2, we agree that business customers need only a statement that other contracts may be affected.

**Question 10:** Do you agree with our implementation proposal that the end-of-contract notification must include information regarding how to terminate the contract?

Yes, we agree, but providers should be allowed to point customers to where to find more information on how to terminate their contract. For instance, under the Ofcom guidance on C1 (termination of contracts), CPs must have websites explaining how to terminate contracts. It would be sensible to direct customers to these websites rather than adding more information into what is likely to be a long notice.

**Question 11:** Do you agree with our implementation proposal that best tariff advice should include the monthly price currently paid, and any changes after the end of the fixed commitment period?

Yes, we agree.

**Question 12:** Do you agree with our implementation proposal that best tariff advice should include changes to the service provided because the fixed commitment period is ending?

Yes, we agree.

**Question 13:** Do you agree with our implementation proposal that best tariff advice should include the date on which the fixed commitment period ends for financially linked or otherwise dependent contracts taken with the same provider, for subscribers on residential contracts?

Please see our response to question 9.

**Question 14:** Do you agree with our implementation proposal that best tariff advice should include the options available to the subscriber after the fixed commitment period has ended?

Yes we agree with respect to residential consumers. For business customers please see section 2.2.

**Question 15:** Do you agree with our implementation proposal that best tariff advice should include the provider's best tariff and with our draft guidance for subscribers on residential contracts that:

- a. providers should give residential consumers at least one and up to three best tariffs;
- b. the tariffs should be based on similarity to the consumer's previous usage where relevant, and otherwise based on service packages that are most similar to what the consumer currently receives;
- c. one tariff should be the cheapest tariff available to the consumer receiving the advice;
- d. one tariff should be the cheapest tariff available to any consumer (if not the same as in (c));
- e. one tariff can be the cheapest upgrade tariff;
- f. one tariff should be a SIM-only tariff where the consumer has a bundled handset and airtime contract; and
- g. tariffs should be for a bundle of services where the consumer receives them under a single contract with the provider or has financially linked or interdependent contracts with the same provider and where the fixed commitment period(s) is about to end or has already ended.

Please provide evidence in support of your views.

We believe that Ofcom must beware of unintended consequences in its proposals on best tariff advice. It is likely to be too simplistic always to equate "best" tariff with "cheapest", which might not always reflect customers' current best interests; stating the cheapest price to *any* customer (even if not available to the customer in question) is likely to drive dissatisfaction and potentially poor decisions in the short term; and there may be unintended consequences in the longer term, such as the levelling out of prices, which will likely dampen competition for new customers and reduce the incentive to switch. We outline our concerns in more detail in sections 1.2 and 4.3.

We are pleased that Ofcom has stated in its guidance that it will not specify how providers should comply with this for business customers. However the provision of this information for business customers is likely to be extremely difficult, and is likely to be misleading. Please see section 4.4.

**Question 16:** Do you agree with our proposed implementation on the timing of the end-of-contract notification?

We do not fully agree with the proposed timing of sending end-of-contract notifications between 10-40 days before the end of the fixed commitment period. The lack of flexibility resulting from the narrow 30 day window during which end-of-contract notifications are required to be sent could lead to information overload if the end-of-contract notification clashes with other important time-bounded service messages, such as a price change notification. We would prefer more flexibility to be made explicit in Ofcom's guidance in order to be able to address this risk if and when it arises and to avoid the risk of consumers disregarding the information. See section 3.3.1.

For business customers, we agree with Ofcom's approach. See section 3.3.1 para 68.

**Question 17:** Do you agree with our proposed implementation regarding the form of the end-of-contract notification?

Yes, we agree in relation to residential consumers. For business customers please see section 2.2.

**Question 18:** Do you agree with our proposals to ensure accessibility of the end-of-contract notification?

Yes, we agree.

**Question 19:** Do you agree with our implementation proposal for annual best tariff notifications to be sent only to end-users who are outside of their fixed commitment period?

Yes, we broadly agree, but we do have concerns around the inclusion of larger business customers. Please see section 2.2.

**Question 20:** Do you agree with our proposed implementation of the requirement to send annual best tariff notifications by specifying that providers must inform end-users of:

- a. the fact that they are not within a fixed commitment period for the relevant contract or contracts;
- b. the services which the provider currently provides under that contract or contracts;
- c. any applicable notice period(s);
- d. details of other contracts the end-user has with the provider;
- e. the monthly subscription price(s); and
- f. the options available.

We agree with some but not all of the proposals here. We set our response in more detail in section 4.6. Broadly our concerns are that:

- Only core services should be included in notifications to residential customers. See our answer to question 6 above.
- It would be preferable for customers just to be told to call their provider to discuss any impact on other contracts they may have. See our answer to question 9 above

We are concerned with the inclusion of larger business customers (see section 2.2).

**Question 21:** Do you agree with our proposed implementation of the requirement to send annual best tariff notifications by specifying that providers must inform end-users of the provider's best tariffs and with our draft guidance for subscribers on residential contracts that:

- a. providers should give residential consumers at least one and up to three best tariffs;
- b. the tariffs should be based on similarity to the consumer's previous usage where relevant, and otherwise based on service packages that are most similar to what the consumer currently receives;
- c. one tariff should be the cheapest tariff available to the consumer receiving the advice;
- d. one tariff should be the cheapest tariff available to any consumer (if not the same as in (c));
- e. one tariff can be the cheapest upgrade tariff;
- f. one tariff should be a SIM-only tariff where the consumer has a bundled handset and airtime contract; and
- g. tariffs should be for a bundle of services where the consumer receives them under a single contract with the provider or has financially linked or interdependent contracts with the same provider and where the fixed commitment period(s) has ended.

Please see answer to question 15 above.

**Question 22:** Do you agree with our proposed implementation on the timing of the annual best tariff notification?

Yes, we agree.

**Question 23:** Do you agree with our proposal to implement the annual best tariff requirements by specifying that providers should combine the best tariff information in a single notification for those end-users who have two or more contracts outside of their fixed commitment period?

Yes, we agree. Providers should have the flexibility to do this. For business customers, subject to our comments in section 2.2, we agree that there should be a message to customers that there may be an impact on other contracts and services, so the customer is made aware of this.

**Question 24:** Do you agree with our implementation proposals regarding the form of the annual best tariff notification?

Yes, we agree in relation to residential consumers. For business customers please see section 2.2.

**Question 25:** Do you agree with our implementation proposals for the timescale within which providers must comply with the end-of-contract and annual best tariff notification requirements?

We are concerned with the implementation period for end-of contract notifications and also annual best tariff notifications. The timescales proposed are extremely challenging given the complexity of the “best tariff” requirements that have been added and also if the requirement to list all ancillary services in the notifications is retained. We are concerned that the six month implementation period leaves little or no time for adequate testing of the systems changes prior to launch and could risk significant errors. Please see section 5.

The suggested timings are even more challenging for business customers and we believe the implementation period should be extended to align with the deadline for implementation of the EEC, i.e. December 2020. See section 5.2 for our detailed response.

**Question 26:** Do you agree with the way we plan to monitor the effectiveness and impact of end-of-contract and annual best tariff notification?

Yes, we agree in principle. However, further clarity is required from Ofcom on what specific information providers should hold and record. See section 5.3.

**Question 27:** Do you agree with the impacts from the introduction of end-of-contract notifications we identify in our assessment? Please provide evidence to support your views.

We think that the impact assessment is too simplistic and underestimates the potential impacts of the proposed changes, given the concerns we have highlighted in our response.

**Question 28:** Do you agree with the impacts from the introduction of annual best tariff notifications we identify in our assessment? Please provide evidence in support of your views.

We think that the impact assessment is too simplistic and underestimates the potential impacts of the proposed changes, given the concerns we have highlighted in our response.

## **Annex A – Mock-ups of notifications**

[Redacted]